

House Bill 189 (AS PASSED HOUSE AND SENATE)

By: Representatives Butler of the 18th, Willard of the 49th, and Golick of the 34th

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 9-9-2 of the Official Code of Georgia Annotated, relating to applicability of the "Georgia Arbitration Code," so as to correct a cross-reference; to amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to the "Fair Business Practices Act of 1975," so as to provide for oversight by the administrator of private child support collection; to provide for definitions; to provide for contractual requirements; to provide for private child support collectors to register with the Secretary of State; to provide for prohibited practices of private child support collectors; to provide for cancellation or termination of such contracts; to provide for other remedies; to amend Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the "Child Support Recovery Act," so as to change provisions relating to payment of child support held by the Child Support Enforcement Agency of the Department of Human Resources; to change provisions relating to confidentiality of information and records held by the department; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

SECTION 1.

Code Section 9-9-2 of the Official Code of Georgia Annotated, relating to applicability of the "Georgia Arbitration Code," is amended by revising paragraph (7) of subsection (c) as follows:

"(7) Any contract involving consumer acts or practices or involving consumer transactions as such terms are defined in paragraphs (2) and (3) of subsection (a) of Code Section 10-1-392, relating to definitions in the 'Fair Business Practices Act of 1975';"

SECTION 2.

Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to the "Fair Business Practices Act of 1975," is amended by revising subsection (a) of Code Section 10-1-392, relating to definitions, as follows:

"(a) As used in this part, the term:

(1) 'Administrator' means the administrator appointed pursuant to subsection (a) of Code Section 10-1-395 or his or her delegate.

~~(1.1)~~(2) 'Campground membership' means any arrangement under which a purchaser has the right to use, occupy, or enjoy a campground membership facility.

~~(1.2)~~(3) 'Campground membership facility' means any campground facility at which the use, occupation, or enjoyment of the facility is primarily limited to those purchasers, along with their guests, who have purchased a right to make reservations at future times to use the facility or who have purchased the right periodically to use the facility at fixed times or intervals in the future, but shall not include any such arrangement which is regulated under Article 5 of Chapter 3 of Title 44.

~~(1.3)~~(4) 'Career consulting firm' means any person providing services to an individual in conjunction with a career search and consulting program for the individual, including, but not limited to, counseling as to the individual's career potential, counseling as to interview techniques, and the identification of prospective employers. A 'career consulting firm' shall not guarantee actual job placement as one of its services. A 'career consulting firm' shall not include any person who provides these services without charging a fee to applicants for those services or any employment agent or agency regulated under Chapter 10 of Title 34.

(5) 'Child support enforcement' means the action, conduct, or practice of enforcing a child support order issued by a court or other tribunal.

~~(2)~~(6) 'Consumer' means a natural person.

~~(2.1)~~(7) 'Consumer acts or practices' means acts or practices intended to encourage consumer transactions.

~~(2.2)~~(8) 'Consumer report' means any written or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity which is used or intended to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(A) Credit or insurance to be used primarily for personal, family, or household purposes; or

(B) Employment consideration.

~~(2.3)~~(9) 'Consumer reporting agency' or 'agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

~~(3)~~(10) 'Consumer transactions' means the sale, purchase, lease, or rental of goods, services, or property, real or personal, primarily for personal, family, or household purposes.

(11) 'Department' means the Department of Human Resources.

~~(4)~~(12) 'Documentary material' means the original or a copy, whether printed, filmed, or otherwise preserved or reproduced, by whatever process, including electronic data storage and retrieval systems, of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or record wherever situate.

~~(5)~~(13) 'Examination' of documentary material means inspection, study, or copying of any such material and the taking of testimony under oath or acknowledgment ~~in~~ with respect ~~of~~ to any such documentary material.

~~(5.1)~~(14) 'File' means, when used in connection with information on any consumer, all of the information on that consumer recorded or retained by a consumer reporting agency regardless of how the information is stored.

~~(5.2)~~(15) 'Going-out-of-business sale' means any offer to sell to the public or sale to the public of goods, wares, or merchandise on the implied or direct representation that such sale is in anticipation of the termination of a business at its present location or that the sale is being held other than in the ordinary course of business and includes, without being limited to, any sale advertised either specifically or in substance to be a sale because the person is going out of business, liquidating, selling his or her entire stock or 50 percent or more of his or her stock, selling out to the bare walls, selling because the person has lost his or her lease, selling out his or her interest in the business, or selling because everything in the business must be sold or that the sale is a trustee's sale, ~~bankrupt~~ bankruptcy sale, ~~save us from bankruptcy sale,~~ ~~insolvent~~ insolvency sale, assignee's sale, must vacate sale, quitting business sale, receiver's sale, loss of lease sale, forced out of business sale, removal sale, liquidation sale, executor's sale, administrator's sale, warehouse removal sale, branch store discontinuance sale, creditor's sale, adjustment sale, or defunct business sale.

~~(6)~~(16) 'Health spa' means an establishment which provides, as one of its primary purposes, services or facilities which are purported to assist patrons to improve their physical condition or appearance through change in weight, weight control, treatment, dieting, or exercise. The term includes an establishment designated as a 'reducing salon,' 'health spa,' 'spa,' 'exercise gym,' 'health studio,' 'health club,' or by other terms of similar import. A health spa shall not include any of the following:

(A) Any nonprofit organization;

(B) Any facility wholly owned and operated by a licensed physician or physicians at which such physician or physicians are engaged in the actual practice of medicine; or

(C) Any such establishment operated by a health care facility, hospital, intermediate care facility, or skilled nursing care facility.

~~(6.1)~~(17) 'Marine membership' means any arrangement under which a purchaser has a right to use, occupy, or enjoy a marine membership facility.

~~(6.2)~~(18) 'Marine membership facility' means any boat, houseboat, yacht, ship, or other floating facility upon which the use, occupation, or enjoyment of the facility is primarily limited to those purchasers, along with their guests, who have purchased a right to make reservations at future times to use the facility or who have purchased a right to use periodically, occupy, or enjoy the facility at fixed times or intervals in the future, but shall not include any such arrangement which is regulated under Article 5 of Chapter 3 of Title 44.

(19) 'Obligee' means a resident of this state who is identified in an order for child support issued by a court or other tribunal as the payee to whom an obligor owes child support.

(20) 'Obligor' means a resident of this state who is identified in an order for child support issued by a court or other tribunal as required to make child support payments.

~~(6.3)~~(21) 'Office' means any place where business is transacted, where any service is supplied by any person, or where any farm is operated.

~~(6.4)~~(22) 'Office supplier' means any person who sells, rents, leases, or ships, or offers to sell, lease, rent, or ship, goods, services, or property to any person to be used in the operation of any office or of any farm.

~~(6.5)~~(23) 'Office supply transactions' means the sale, lease, rental, or shipment of, or offer to sell, lease, rent, or ship, goods, services, or property to any person to be used in the operation of any office or of any farm but shall not include transactions in which the goods, services, or property is purchased, leased, or rented by the office or farm for purposes of reselling them to other persons.

~~(7)~~(24) 'Person' means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity.

(25) 'Private child support collector' means an individual or nongovernmental entity that solicits and contracts directly with obligees to provide child support collection services for a fee or other compensation but shall not include attorneys licensed to practice law in this state unless such attorney is employed by a private child support collector.

~~(7.1)~~(26) 'Prize' means a gift, award, or other item intended to be distributed or actually distributed in a promotion.

~~(8)~~(27) 'Promotion' means any scheme or procedure for the promotion of consumer transactions whereby one or more prizes are distributed among persons who are required to be present at the place of business or are required to participate in a seminar, sales presentation, or any other presentation, by whatever name denominated, in order to receive the prize or to determine which, if any, prize they will receive. Promotions shall not include any procedure where the receipt of the prize is conditioned upon the purchase

of the item which the seller is trying to promote if such condition is clearly and conspicuously disclosed in the promotional advertising and literature and the receipt of the prize does not involve an element of chance. Any procedure where the receipt of the prize is conditioned upon the purchase of the item which the seller is trying to promote or upon the payment of money and where the receipt of that prize involves an element of chance shall be deemed to be a lottery under Code Section 16-12-20; provided, however, that nothing in this definition shall be construed to include a lottery operated by the State of Georgia or the Georgia Lottery Corporation as authorized by law; provided, further, that any deposit made in connection with an activity described by subparagraph (b)(22)(B) of Code Section 10-1-393 shall not constitute the payment of money.

~~(9)~~(28) 'Trade' and 'commerce' mean the advertising, distribution, sale, lease, or offering for distribution, sale, or lease of any goods, services, or any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value wherever situate and shall include any trade or commerce directly or indirectly affecting the people of ~~the~~ this state."

SECTION 3.

Said part is further amended by adding two new Code sections to read as follows:

"10-1-393.9.

(a) Private child support collectors shall register with the Secretary of State and shall provide information as requested by the Secretary of State, including, but not limited to, the name of the private child support collector, the office address and telephone number for such entity, and the registered agent in this state on whom service of process is to be made in a proceeding against such private child support collector.

(b) An application for registration shall be accompanied by a surety bond filed, held, and approved by the Secretary of State, and the surety bond shall be:

(1) Issued by a surety authorized to do business in this state;

(2) In the amount of \$50,000.00;

(3) In favor of the state for the benefit of a person damaged by a violation of this Code section; and

(4) Conditioned on the private child support collector's compliance with this Code section and Code Section 10-1-393.10 and the faithful performance of the obligations under the private child support collector's agreements with its clients.

(c) In lieu of a surety bond, the Secretary of State may accept a deposit of money in the amount of \$50,000.00. The Secretary of State shall deposit any amounts received under this subsection in an insured depository account designated for that purpose.

10-1-393.10.

(a) Any contract for the collection of child support between a private child support collector and an obligee shall be filed by the private child support collector with the Governor's Office of Consumer Affairs.

(b) Any contract for the collection of child support between a private child support collector and an obligee shall be in writing, in at least ten-point type, and signed by such private child support collector and obligee. The contract shall include:

(1) An explanation of the nature of the services to be provided;

(2) An explanation of the amount to be collected from the obligor by the private child support collector and a statement of a sum certain of the total amount that is to be collected by the private child support collector that has been engaged by the obligee;

(3) An explanation in dollar figures of the maximum amount of fees which could be collected under the contract and an example of how fees are calculated and deducted;

(4) A statement that fees shall only be charged for collecting past due child support, although the contract may include provisions to collect current and past due child support;

(5) A statement that a private child support collector shall not retain fees from collections that are primarily attributable to the actions of the department and that a private child support collector shall be required by law to refund any fees improperly retained;

(6) An explanation of the opportunities available to the obligee or private child support collector to cancel the contract or other conditions under which the contract terminates;

(7) The mailing address, telephone numbers, facsimile numbers, and e-mail address of the private child support collector;

(8) A statement that the private child support collector shall only collect money owed to the obligee and not child support assigned to the State of Georgia;

(9) A statement that the private child support collector is not a governmental entity and that the department provides child support enforcement services at little or no cost to the obligee; and

(10) A statement that the obligee may continue to use or pursue services through the department to collect child support.

(c) A private child support collector shall not:

(1) Improperly retain fees from collections that are primarily attributable to the actions of the department. If the department or an obligee notifies a private child support collector of such improper fee retention, such private child support collector shall refund such fees to the obligee within seven business days of the notification of the improper retention of fees and shall not be liable for such improper fee retention. A private child

support collector may require documentation that the collection was primarily attributable to the actions of the department prior to issuing any refund;

(2) Charge fees in excess of one-third of the total amount of child support payments collected;

(3) Solicit obligees using marketing materials, advertisements, or representations reasonably calculated to create a false impression or mislead an obligee into believing the private child support collector is affiliated with the department or any other governmental entity;

(4) Use or threaten to use violence or other criminal means to cause harm to an obligor or the property of the obligor;

(5) Falsely accuse or threaten to falsely accuse an obligor of a violation of state or federal laws;

(6) Take or threaten to take an enforcement action against an obligor that is not authorized by law;

(7) Represent to an obligor that the private child support collector is affiliated with the department or any other governmental entity authorized to enforce child support obligations or fail to include in any written correspondence to an obligor the statement that 'This communication is from a private child support collector. The purpose of this communication is to collect a child support debt. Any information obtained will be used for that purpose.';

(8) Communicate to an obligor's employer, or his or her agent, any information relating to an obligor's indebtedness other than through proper legal action, process, or proceeding;

(9) Communicate with an obligor whenever it appears the obligor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondences, return telephone calls, or discuss the obligation in question, or unless the attorney and the obligor consent to direct communication;

(10) Contract with an obligee who is owed less than three months of child support arrearages; or

(11) Contract with an obligee for a sum certain to be collected which is greater than the total sum of arrearages and the statutory interest owed as of the date of execution of the contract.

(d) In addition to any other cancellation or termination provisions provided in the contract between a private child support collector and an obligee, the contract shall be cancelled or terminate if:

(1) The obligee requests cancellation in writing within 30 days of signing the contract;

(2) The obligee requests cancellation in writing after any 12 consecutive months in which the private child support collector fails to make a collection;

(3) The private child support collector breaches any term of the contract or violates any provision contained within this Code section; or

(4) The amount to be collected pursuant to the contract has been collected.

(e) When it reasonably appears to the administrator that a private child support collector has contracted with obligees on or after July 1, 2009, using a contract that is not in compliance with this Code section, the administrator may demand pursuant to Code Section 10-1-403 that such private child support collector produce a true and accurate copy of each such contract. If such private child support collector fails to comply or the contracts are determined by the administrator to not be compliant with the provisions of this Code section, the administrator may utilize any of the powers vested in this part to ensure compliance.

(f) Upon the request of an obligee, the Child Support Enforcement Agency of the department shall forward child support payments made payable to the obligee to any private child support collector that is in compliance with the provisions of this Code section and Code Section 10-1-393.9.

(g) The remedies provided in this part shall be cumulative and shall be in addition to any other procedures, rights, or remedies available under any other law.

(h) Any waiver of the rights, requirements, and remedies provided by this Code section that are contained in a contract between a private child support collector and an obligee violates public policy and shall be void."

SECTION 4.

Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the "Child Support Recovery Act," is amended by revising subsection (f) of Code Section 19-11-18, relating to collection procedures, as follows:

"(f) Notwithstanding any other provision of this title to the contrary, any child support being held by the Child Support Enforcement Agency of the ~~Department of Human Resources~~ department shall be paid to the custodial parent, legal guardian, or caretaker relative having custody of or responsibility for a child within ~~30~~ two days from receipt of same by the enforcement agency."

SECTION 5.

Said article is further amended by revising subsection (a) of Code Section 19-11-30, relating to confidentiality of information and records held by the department, as follows:

280 "(a)(1) Information and records obtained by the department pursuant to any provision of
281 this article or Title IV-D of the federal Social Security Act shall be deemed to be
282 confidential and shall be released only by permission of the party or parties named in the
283 information or records, by order of the court, or for those purposes specifically authorized
284 by this article. Any person who violates this Code section shall be guilty of a
285 misdemeanor.

286 (2) The department shall provide to an attorney representing an obligee or to a private
287 child support collector, as defined in Code Section 10-1-392, hired by an obligee and
288 acting pursuant to a power of attorney signed by such obligee, any documents which such
289 obligee would be entitled to request and receive from the Child Support Enforcement
290 Agency of the department."

291 **SECTION 6.**

292 This Act shall become effective on July 1, 2009, and shall be applicable to all contracts for
293 private collection of child support payment entered into on or after such effective date.

294 **SECTION 7.**

295 All laws and parts of laws in conflict with this Act are repealed.